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**Carla M. Butler**  
Lead Paralegal

January 9, 2008

Carol Hulse  
Oregon Public Utility Commission  
550 Capitol St., NE  
Suite 215  
Salem, OR 97301

Re: AR 523

Dear Ms. Hulse:

Enclosed for filing in the above entitled matter please find an original and (5) copies of Qwest Corporation's Comments, along with a certificate of service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Carla".

Carla M. Butler

CMB:  
Enclosure  
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BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

AR 523

In the Matter of a Rulemaking to Amend  
Timeframes for Audits of Fees Due

QWEST CORPORATION'S COMMENTS

Pursuant to the Commission's Notice of Proposed Rulemaking sent to the Secretary of State on November 12, 2007 and served on the parties on November 15, 2007, Qwest Corporation ("Qwest") hereby submits its comments regarding the proposed rules to amend timeframes for audits of fees due.

**COMMENTS**

The Notice of the Proposed Rulemaking Hearing ("Notice") summarizes the proposed rule amendments to various Oregon Administrative Rules as allowing the Commission an *unlimited* time to audit a company's fee records and supporting documentation of the company if the company operated without a certificate of authority when a certificate is required, or if the Commission "discovers" fraud, *negligence*, misrepresentation or misappropriation of funds.<sup>1</sup>

The Notice goes on to state that the proposed amendments are intended to maintain the protection of programs and customers and to allow the Commission to collect the fees that support the PUC programs. The Statement of Need and Fiscal Impact ("Statement") alleges that the amended rules are needed to maintain the protection of Commission programs and customers, and further, notes that currently, the Commission is limited to a three-year audit period unless the company does not have a certificate of authority. The Statement further argues that allowing the

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<sup>1</sup> The rules at issue are: OAR 860-021-0033 (electric companies), OAR 860-021-0034 (gas and steam utilities), OAR 860-021-0036, OAR 860-032-0095, OAR 860-032-0640, OAR 860-033-0008, OAR 860-034-0095 (telecommunications companies), OAR 860-036-0095 (water utilities) and OAR 860-037-0095 (wastewater utilities).

unlimited audit time provides the Commission opportunity to collect the fees due to support the Commission's programs.

Preliminarily, Qwest notes that it agrees that the protection of Commission programs and customers should be maintained and that the Commission should be able to collect the fees that support the Commission's programs, and that these are laudable goals. However, neither the Notice nor the Statement articulate any reason why (or how) protection of programs and customers or the Commission's ability to collect such fees has been a problem, or why (or how) the current three-year audit period is not sufficient for the Commission's goals, or for the integrity of such programs. The summaries in the Notice and Statement are so conclusory that they fail to give any factual basis for the need for such amended rules. Before the Commission amends any rules, there should be a detailed, fact-based rationale for the need, and an explanation why such a drastic change (from a defined, and reasonable, three-year period to a completely *unlimited* period) is needed. To use a cliché, "forever" is a very long time!

In addition, apart from the lack of any rationale for the proposed amendments, a significant problem is that the proposed amended rules lump "negligence" (unintentional conduct) with intentional conduct like fraud or misrepresentation. Qwest does not believe that a company's unintentional, good faith mistake (negligence) should be used to penalize it by exposing it to *unlimited liability*. This is especially so because a company's negligent non-payment of fees may well be discovered by the company itself and then self-reported by the company to the Commission. However, exposing an unintentionally negligent company to unlimited exposure could give such company an incentive not to report such negligence, for fear of it being exposed to open-ended unlimited liability. This is especially so since the consequence of non-reporting could be no greater than if the Commission itself later discovered the problem.

If so, the company could well determine that the risk of not reporting the negligence is outweighed by the risk of unlimited exposure it would otherwise have as a result of the amended rules, thus giving the company an incentive to not self-report but instead wait to see if the Commission discovers such negligence. For the above stated reasons, the Commission should remove “negligence” as a reason for unlimited audit authority.

Qwest also believes that an unlimited period is patently unreasonable. It is difficult to imagine any business having to retain any type of documentation forever. At some point, especially in our information-intensive world, companies must be able, consistent with law and good corporate document-retention practices, to discard documents and records, both from an administrative and from a cost perspective. All affected companies would need to change their internal document retention procedures and policies, which would increase costs, including information technology (IT) and human resources. Thus, these proposed rules would increase costs for all companies, and not only for “non-compliant” companies. These rules would also cause significant costs and disruption for those multi-state companies like Qwest which would have to have separate rules, procedures and policies for the state of Oregon compared to their other states as it relates to the retention of OPUC fee based records. In short, there is no valid reason to have such an open-ended period (unlimited, or forever) for any records.<sup>2</sup>

Further, Qwest believes that the current three-year audit period (to begin an audit, but not necessarily to have it completed by then) is reasonable. There certainly has been no showing to

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<sup>2</sup> Although Qwest does not believe a change to the current three-year audit period is necessary, for the reasons set forth here, if the Commission really can show the three-year period is not sufficient, or that this period has been a problem in the past, then it should at least propose a different, but defined, period (such as, for example, doubling the current three-year period to six years, which would also be consistent with the general contract statute of limitations period in Oregon). However, even then, the Commission should have to show that the current three-year audit period is not sufficient, or that it has been a problem in the past, or why it is necessary to double (or increase) the current period.

the contrary. Three years is a standard document retention and audit period for many types of records. Indeed, the Commission itself has used a three-year period in numerous contexts, including for overbilling and underbilling (OAR 860-021-0135) and for the Oregon USF (OUS) rules (OAR 860-032-0610—0670). Again, it should be noted that the three-year period is merely to *begin* an audit, and not necessarily to “complete” the audit.

Finally, yet another significant problem with the proposed rules is that they do not define what the Commission means by “if the *Commission* “discovers” “fraud, negligence, misrepresentation or misappropriation.” What does “discover” mean? Does it mean that it must be as a result of an adjudicated proceeding? If so, must it be an adjudication in a court of law, or would adjudication in a Commission docket be sufficient? If not through an adjudicated result, would it be sufficient if the Commission, or its Staff, merely *believes* or *suspects* there has been fraud, negligence, misrepresentation or misappropriation?

### **CONCLUSION**

For the reasons stated above, Qwest requests that the Commission not adopt the proposed amended rules to amend timeframes for audits of fees due as proposed.

DATED: January 9, 2008

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

**AR 523**

I hereby certify that on the 9<sup>th</sup> day of January 2008, I served the foregoing **QWEST CORPORATION'S COMMENTS** in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at their regular office address shown below, and deposited in the U.S. post office at Portland, Oregon.

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DATED this 9<sup>th</sup> day of January, 2008.

**QWEST CORPORATION**



By: \_\_\_\_\_

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